



ADVOCACY CHARTER LAWYERS FOR LAWYERS – UPR Kazakhstan – 34th SESSION – November 2019

Lawyers for Lawyers (L4L), established in 1986, is an independent foundation merely funded by lawyers' donations. L4L is committed to safeguard the proper functioning of the rule of law through a free and independent exercise of the legal profession in accordance with international norms, including the United Nations Basic Principles on the Role of Lawyers. L4L was granted Special Consultative status with the UN Economic and Social Council in July 2013. www.lawyersforlawyers.org

Stakeholders' submission	Suggested questions	Suggested recommendations
No effective guarantees for the functioning of lawyers		
<p>Lawyers in Kazakhstan have been subjected to improper interference and harassment amongst others by members of the law enforcement agencies, investigative bodies and the judiciary. Lawyers working on sensitive cases are frequently denied the right to privately consult with their clients in penitentiary institutions or access to their clients in these institutions is impeded. Furthermore, it was reported that some lawyers have been subjected to, or threatened with prosecution or disciplinary sanctions on improper grounds, such as the expression of critical views on social media. See submission Lawyers for Lawyers (L4L) par. 11</p> <p>In certain cases, lawyers may be arbitrarily removed from cases in which they represent clients in accordance with the law. One means of doing this is to name the lawyers as witnesses in cases in which they represent clients. Testifying as a witness creates a conflict of interest and violates the principles of confidentiality and lawyer independence. See submission L4L par. 12</p>	<p>(1) How does Kazakhstan ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the proper functioning of the legal profession?</p> <p>(2) How does Kazakhstan ensure the effective protection of lawyers' rights to freedom of expression, association or the right to participate in public affairs?</p> <p>(3) How does Kazakhstan ensure that lawyers are not subjected to unfair trials, suspension, disbarment or other disciplinary proceedings as a result of discharging their professional duties?</p>	<p>Take immediate measures to ensure the effective protection of lawyers against any form of harassment and attempts to improperly impede or interfere with their defence of clients, in accordance with articles 16(a) and (c) of the Basic Principles on the Role of Lawyers (the Basic Principles).</p> <p>Immediately take effective measures to ensure that all communications and consultations between lawyers and their clients within their professional relationship are confidential, including eliminating the practice of calling lawyers as a witness in cases in which they represent their clients, in accordance with art. 16(b) and 22 of the Basic Principles.</p> <p>Immediately take effective measures to protect lawyers from disciplinary measures or other sanctions on improper grounds, including for exercising their right to freedom of expression, association, the right to participate in public affairs or for carrying out their professional duties in accordance with Articles 23 and 16(c) of the Basic Principles.</p>
Bar Associations and disciplinary proceedings		
<p>In July 2018, the Kazakhstan government adopted the new law 'On the Professional Activities of Advocates and Legal Assistance'. Certain parts of this law are of concern for they could undermine the independence of the legal profession. Under this law the control of the Ministry of Justice over the admission to the practice of law and the issuing of licenses is continued and expanded. This raises concerns about the independence. See submission L4L par. 15 &16</p> <p>Furthermore, the law stipulates that the Disciplinary Commissions will now besides lawyers include retired judges and 'representatives of the public', appointed by the Ministry of Justice. This new composition of the disciplinary commissions – and in particular the presence of three representatives appointed by the executive power – can no longer guarantee that this body "be free from any influence or pressure from the legislative or the executive branches of power or any other party" and therefore its independence and impartiality is no longer guaranteed. See submission L4L par. 15 &16</p>	<p>(1) How does Kazakhstan ensure that the Bar Association is independent and that access to the legal profession is not conditioned or controlled by the executive branch but by an independent decision maker?</p> <p>(2) How does Kazakhstan ensure that disciplinary procedures against lawyers are carried out impartially without undue interference by the executive power?</p>	<p>Amend the law 'On the Professional Activities of Advocates and Legal Assistance' as follows:</p> <p>(1) Ensure that licensing to practice law is not controlled or conditioned by the executive branch, but by an independent council, to secure the independence of the legal profession.</p> <p>(2) Ensure that disciplinary proceedings against lawyers are handled by a disciplinary committee established by the legal profession and independent from the executive power to guarantee the impartiality of these procedures, in accordance with art. 27, 28, 29 of the Basic Principles.</p>